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November 5, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

—BY HAND DELIVERY AND—
ELECTRONIC MAIL

Re: Complaint of Randall Terry for Congress regarding CBS Television Stations South Florida, WFOR-TV & WBFS-TV's violation of 47 U.S.C. §312 and §315

To: Media Bureau, Policy Division, Political Programming Branch
Attn: Robert Baker and Hope Cooper

Dear Ms. Dotrch:

Randall Terry for Congress, through its counsel Gammon and Grange, is filing this letter request regarding WFOR-TV and WBFS-TV's willful and ongoing denial of reasonable access to Randall Terry for Congress under sections 312 and 315 of the Communications Act. As Election Day is only one day away, the matter is urgent.

Attached are email exchanges between Randall Terry for Congress ("Terry") and representatives of CBS Television Stations South Florida ("CBS") the licensee of WFOR-TV and WBFS-TV (the "Stations"). CBS and the Stations have willfully and repeatedly denied Mr. Terry reasonable access under 47 U.S.C. §312 and §315.

Mr. Terry has been certified by the state of Florida and placed on the ballot as a candidate for the U.S. House of Representatives in Florida's 20th Congressional District. Proof of such has been provided to CBS and the Stations on several occasions.

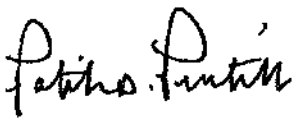
CBS and the Stations continue to refuse Mr. Terry reasonable access under sections 312 and 315 of the Communications Act. On October 10, 2012, CBS and the Stations by counsel sent an email to Mr. Terry's campaign arguing that Mr. Terry's advertisements were not a "use" on behalf of his candidacy and that WFOR and WBFS in Miami would not air the spots. Mr. Terry's campaign responded on October 15, 2012 that "[D]irectly contrary to CBS and the Station's assertions, a candidate who secures time under 47 USCS § 315 need not talk about a subject directly related to his candidacy and may use time as he deems best" and "[D]enying a candidate time on ground that he is not utilizing that time in furtherance of his candidacy is an exercise of censorship prohibited by § 315."

On October 19, 2012, CBS and the Stations, through Ms. Susan Inker-Puretz, refused to provide Mr. Terry reasonable access under the Communications Act. Ms. Inker-Puretz's refusal provided no reason and cited no authority for denying Mr. Terry reasonable access. Despite this lack of rationale, Mr. Terry responded on the same day by addressing the Florida statutory argument that several other stations had raised. Namely, that Fla. Stat. Ann. § 99.012(2), which prohibits a candidate from qualifying as a candidate for more than one public office, did not disqualify Mr. Terry from eligibility for the 20th Congressional District in Florida because he is also a candidate for President of the United States in several other States. Mr. Terry concluded by requesting a response from Ms. Inker-Puretz or from CBS and the Station's counsel. No response was ever received.

Mr. Terry contends that CBS and the Stations' ongoing refusal demonstrates a flagrant disregard of important federally mandated laws guaranteeing access to candidates such as Mr. Terry and of the Commission's authority to administer and enforce sections 312 and 315 of the Communications Act. Given the already substantial delay and the fact that Election Day is one day from now, Mr. Terry asks the Commission to immediately direct CBS and the Stations to provide Mr. Terry reasonable access.

Thank you for your assistance in this matter.

Kind regards,



A. Wray Fitch III
Patrick D. Purtill
Gammon & Grange, P.C.

cc: Howard F. Jaeckel, Sr. VP and General Counsel, CBS Broadcasting, Inc., via email: hfjaeckel@cbs.com
Robert Baker, Federal Communications Commission, via email: robert.baker@fcc.gov
Hope Cooper, Federal Communications Commission, via email: hope.cooper@fcc.gov

Attachment(s): Correspondence between CBS/Stations and Terry Campaign

ATTACHMENT 1

Patrick Purtill - (3260) PLC: KDKA & WPCW (PA) and WFOR & WBFS (FL) Denial of Reasonable Access under Section 312 and 315

From: Patrick Purtill
To: hfjaeckel@cbs.com
Date: 10/15/2012 4:55 PM
Subject: (3260) PLC: KDKA & WPCW (PA) and WFOR & WBFS (FL) Denial of Reasonable Access under Section 312 and 315
CC: Wray Fitch

October 15, 2012

Howard F. Jaeckel
Senior Vice President, Associate General Counsel
CBS Broadcasting, Inc.
51 West 52nd Street
New York, NY 10019

RE: KDKA and WPCW's (Pennsylvania) and WFOR and WBFS's (Florida) Denial of Reasonable Access under Sections 312 and 315 of the Communications Act

Dear Mr. Jaeckel:

I am following up on a voice mail message and email to you from earlier today. As I mentioned, Gammon & Grange is acting as counsel to Pro-Life Candidates, a joint fund-raising committee registered with the Federal Election Commission. The earlier messages were in response to your October 12, 2012 email to Kathy Offerman regarding KDKA and WPCW's ("Stations") denial of advertisements submitted by a legally qualified candidate requesting reasonable access under section 312(a)(7) of the Communications Act. It has come to our attention that you also sent an email dated October 10, 2012 to Kathy Offerman similarly arguing that Mr. Terry's advertisements were not a "use" on behalf of his candidacy and that WFOR and WBFS in Miami would not air the spots where he is a legally qualified candidate for the 20th Congressional District.

As we stated earlier, CBS and the Station's assertion (including the assertions by the Stations in Florida) that the content of the submitted advertisement demonstrates that the ads are not "on behalf of his candidacy" under section 312, is unsupported by the Communications Act, the Commission's rules and all relevant precedent. According to the U.S. Supreme Court, the word "censorship" as used in 47 USCS § 315, which provides that licensee "shall have no power of censorship over the material broadcast," is to be defined as it is commonly understood, that is, as connoting any examination of thought or expression in order to prevent publication of "objectionable" material. *Farmers Educational & Cooperative Union v WDAY, Inc.*, 360 US 525 (1959). Additionally, under 47 USCS § 315, licensees may determine total time and duration of broadcasts by candidates, but they may not reject or censure content or format of any such use. *In re James L.*

Buckley, 67 FCC2d 5 (1977). Directly contrary to CBS and the Station's assertions, a candidate who secures time under 47 USCS § 315 need not talk about a subject directly related to his candidacy and may use time as he deems best. Denying a candidate time on ground that he is not utilizing that time in furtherance of his candidacy is an exercise of censorship prohibited by § 315. *In re Socialist Labor Party of America*, 40 FCC 241 (1952); *In re Public Notice*, 24 FCC2d 874 (1970, FCC 70-871); *In re Pacific Broadcasting Co.*, 32 FCC2d 263 (1971); *In re Pat Paulsen*, 33 FCC2d 835 (1972).

We had hoped to resolve this matter with CBS this afternoon as there are precious few days left before Election Day. As we informed you earlier today, the FCC made an oral ruling in PLC's favor regarding broadcast of these advertisements on October 12, 2012. One of the arguments rejected by the FCC is the argument raised by CBS relating to the message of the advertisements. The Commission also cautioned that every day a candidate is not provided equal access under section 312 could be viewed as separate willful and repeated failure to provide reasonable access.

If CBS and the Stations (including WFOR and WBFS in Florida) do not respond to these requests for reasonable access by a legally qualified candidate by close of business today, we will file a complaint with the FCC tomorrow morning. Given the ruling of the FCC and the correspondence forwarded to you earlier today placing you on notice of their decision, we still hope this will be unnecessary.

Once again, if you have any questions, please feel free to contact us and thank you for your assistance in this matter.

Kind regards,

Patrick D. Purtill

Patrick D. Purtill
Associate

Gammon & Grange, P.C.
8280 Greensboro Dr - 7th Floor
McLean, VA 22102
Phone: 703-761-5000 ext. 123
Fax: 703-761-5023
PDP@GG-Law.com

ATTACHMENT 2

Patrick Purtill - Order Randall Terry for US House WFOR & WBFS

From: Patrick Purtill
To: inkers@wfor.cbs.com
Date: 10/19/2012 6:20 PM
Subject: Order Randall Terry for US House WFOR & WBFS
CC: Wray Fitch
Attachments: Fwd: Order Randall Terry for US House WFOR & WBFS

October 19, 2012

Susan Inker-Puretz
Senior Account Executive
WFOR/WBFS (CBS Miami)
via email

Dear Ms. Inker-Puretz:

Thank you for your note to Ms. Kathy Offerman which she has forwarded to me for response. Mr. Terry is a legally qualified candidate for Federal office under section 312 and 315 of the Communications Act. Unfortunately, your note provides no reason and cites no authority for denying Mr. Terry reasonable access under the Communications Act.

By email dated October 17, 2012, Ms. Offerman provided you with a document from the Florida Secretary of State's Office confirming Mr. Terry is on the ballot for the 20th Congressional District. Additionally, her email applied the FCC's three part test to determine who is a legally qualified candidate to Mr. Terry's candidacy. Ms. Offerman's original email and its attachments is attached to this email for your information. Somehow, it was dropped from your response.

I will assume that WFOR/WBFS and CBS are proceeding in good faith. Therefore, I will answer an objection that the Terry campaign has received from other stations in Florida even though you have raised no rationale for your denial.

Some stations in Florida have asserted that Fla. Stat. Ann. § 99.012(2), which prohibits a candidate from qualifying as a candidate for more than one public office, disqualifies Mr. Terry from eligibility for the 20th Congressional District in Florida because he is also a candidate for President of the United States in several other States. However, this assertion is incorrect and violates a basic rule of statutory interpretation: namely, that Florida cannot apply its laws outside of its own borders. A simple example should make the matter clear. If this were the case, WFOR & WBFS as well as all of CBS's affiliates in Florida would be required to deny reasonable access to the Romney/Ryan campaign. As I am sure you know, Paul Ryan is presently on the ballot in Florida as a candidate for Vice President of the United States and on the ballot in Wisconsin for U.S. Representative for the 1st Congressional District. If a Florida station making this argument did not deny the Romney/Ryan campaign reasonable access under section 312 but did deny Mr. Terry's campaign, it would raise the question as to why Mr. Terry's campaign has been singled out for additional scrutiny, put to a higher level of proof, and denied the same access provided to the Romney/Ryan campaign. It could be argued that such

actions implicate the anti-discrimination provisions of Section 73.1941(e) of the Federal Communication Commission's rules.

I raise the issue simply because you have provided no rationale for denying Mr. Terry reasonable access under section 312 and I am assuming that you have an honest rationale. I expect that this communication coupled with the October 17, 2012 email from Ms. Offerman provides all of the proof you need to confirm that Mr. Terry is a "legally qualified candidate" for Federal office and entitled to reasonable access under section 312. If your response is another denial of reasonable access to Mr. Terry's campaign with no rationale or authority cited, we will be forced to ask the Commission to step in and help resolve the matter. I sincerely hope that is not necessary. If you are unsure as to how to proceed, I recommend that you forward this email in its entirety, including attachments, to WFOR/WBFS' legal counsel or legal counsel in CBS's headquarters.

Election Day is rapidly approaching and time is of the essence in this matter. I hope to hear from you or your counsel shortly. Thank you.

Sincerely,

Patrick Purtill

Patrick D. Purtill
Associate

Gammon & Grange, P.C.
8280 Greensboro Dr - 7th Floor
McLean, VA 22102
Phone: 703-761-5000 ext. 123
Fax: 703-761-5023
PDP@GG-Law.com

>>> Kathy Offerman <kmofferman@gmail.com> 10/19/2012 4:35 PM >>>

Sent from my iPhone

Begin forwarded message:

From: "Inker-Puretz, Susan" <inkers@wfor.cbs.com>
Date: October 19, 2012, 4:30:03 PM EDT
To: Kathy Offerman <kmofferman@gmail.com>
Subject: Randall Terry

Kathy,
We respectfully decline to broadcast the spot you have submitted.
Susan

Susan Inker-Puretz | Senior Account Executive

Ph: 954-763-5620 | Fax: 305-639-4654 | inkers@wfor.cbs.com
cbsmiami.com | WFOR/WBFS | 8900 NW 18 Terrace Miami Florida 33172

CBS
51 WEST 52 STREET
NEW YORK, NEW YORK 10019-6188

(212) 975-4099
FAX: (212) 975-0117
hfjaeckel@cbs.com

HOWARD F. JAECKEL
SENIOR VICE PRESIDENT, ASSOCIATE GENERAL COUNSEL

BY ELECTRONIC MAIL

Mr. Robert Baker
Chief, Political Programming Branch
Policy Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Baker: November 15, 2012

CBS Corporation ("CBS"), the ultimate owner of WFOR-TV and WBFS-TV Miami, Florida (the "Stations"), hereby submits its response to a complaint filed on behalf of Randall Terry, who was a purported candidate for U.S. Representative from Florida's 20th Congressional District in the recent General Election. The Complaint, e-mailed to the Commission staff at approximately 7:30PM on Election Eve, and not formally filed with the Commission until Election Day, alleges that the Stations violated Sections 312(a)(7) and 315 of the Communications Act by declining to broadcast an announcement on behalf of Mr. Terry's candidacy.

As discussed below, the timing of the complaint unquestionably shows that it could not have been filed with any reasonable, good-faith expectation of obtaining air time on the Stations. While Mr. Terry's motivations for waiting until the last possible moment to bring this matter before the FCC are best known to him, it is clear that there is now no live controversy for the Commission to resolve. The complaint should be dismissed as moot.

More fundamentally, at no time in question did Mr. Terry meet the requirements of federal law to hold the federal office that he purportedly sought. The United States Constitution specifies that only an "[i]nhabitant" of a particular state "when elected" is eligible to be a Representative of that state in Congress. But Mr. Terry is not a resident of Florida; on the contrary, in filings made with the Federal

Election Commission only two weeks before the election, Mr. Terry confirmed that he lived four states to the north, in Purgitsville, West Virginia.[1] He therefore also did not satisfy one of the prongs set forth in the FCC's rules for "legally qualified" status. The Stations were accordingly entirely within their rights to reject his request for time.

Indeed, not only was Mr. Terry disqualified, as a non-Florida resident, from holding the office for which he claimed to be running, but his own fund-raising materials reveal, beyond any doubt, that being elected to that office – or even winning some votes as a candidate for it – was no part of his real objective. Rather, Mr. Terry's obtaining a place on the Florida ballot, and his request for time on WFOR-TV and WBFS-TV, were part of a calculated effort by him to create sham candidacies, in strategically selected states, for the sole purpose of influencing the presidential election by using the Communications Act to force stations to air inflammatory and gruesome messages that they would otherwise never inflict on unsuspecting viewers. The Stations could therefore reasonably conclude, even if Mr. Terry had met the criteria for being a legally qualified candidate, that his requests to purchase time on the Station were not "for use . . . on behalf of his candidacy" within the meaning of Section 312(a) (7).

Further, under all the circumstances presented here, a decision that broadcasters have *no* editorial discretion to decline to run a message on behalf of a transparently simulated candidacy, no matter how offensive its content, would raise significant statutory and constitutional issues. There is no need to reach those issues in order to dismiss the instant Complaint, but they are nonetheless additional grounds for dismissal.

Factual Background

Randall Terry is an anti-abortion activist known for his efforts to get on federal ballots and then use the Communications Act to require television stations to broadcast graphic advertisements that feature bloody, dismembered fetuses. In the current election season, he has sought time on CBS owned television stations to present advertisements that included potentially defamatory material,[2] photographs

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1 See Mr. Terry's Amended FEC Form 2 – Statement of Candidacy, filed October 22, 2012, available at http://www.fec.gov/press/press2011/presidential_form2nm.shtml

2 Both of the Stations received letters from an attorney representing actor Samuel L. Jackson threatening to sue them for defamation for broadcasting

of the lynching of African-Americans,[3] decapitated corpses,[4] and even a beheading in progress.[5]

Mr. Terry's self-proclaimed motivation for seeking to run these ads had nothing to do with the Florida election in which he claimed to be running, or any other race in which he or one of his allies managed to procure access to the ballot. Rather, as he explained in a fund-raising letter,[6] his aim was to use "FCC Law" to "run ads in states where I am not even on the ballot," so as to affect the outcome of the presidential election in swing states. In the case of Florida, where he appeared on the ballot as a candidate for Congress rather than president (as in other states), Terry boasted that he could "run the same type of ads I run everywhere else, except they will be paid for and approved by Randall Terry for U.S. House."

The history of Mr. Terry's attempts to purchase time on the Stations plainly reveals the utter irrelevance of his supposed congressional candidacy to his aims in running the spot. On or about October 8, 2012, Mr. Terry's time buyer placed an order with the Stations for one announcement to run on each. The spot submitted did not

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a Terry ad that, among other things, accused Jackson of "carrying water for racists." *See,* Letters dated October 15, 2012, to WFOR-TV and WBFS-TV from Charles J. Harder, Esq., attached as Exhibit A; spot titled "He's Carrying Water for Racists," available at http://www.uncletomjackson.com/. The stations in fact did not broadcast the commercial, rejecting it on the grounds that it made no reference, beyond the sponsor identification, to Mr. Terry's supposed congressional candidacy.

3 Spot titled "He's Carrying Water for Racists," available at http://www.uncletomjackson.com/.

4 Spot titled "Obama Muslim Nightmare," available at http://www.terryforpresident.com/

5 *Id.*

6 See, http://www.terryforpresident.com/documents/WantObamaDefeated.pdf (attached as Exhibit B).

mention, visually or aurally, that Mr. Terry was running for Congress; rather, the only message in the announcement relevant to an election was "don't vote for Obama." Although Mr. Terry was on the Florida ballot as a candidate for Congress, not president, the sponsor identification read "Paid for by Randall Terry for President Campaign Committee."[7]

The next day, apparently having realized that the wrong customization had been inserted into their template spot, Mr. Terry's representatives submitted a revised announcement with the sponsor identification changed to "Paid for by Randall Terry for U.S. House." Since that was the only reference to Mr. Terry's putative candidacy in the message, the Stations rejected it as not being "on behalf of" that candidacy and because of its potentially defamatory and offensive content.[8]

Mr. Terry made no complaint to the FCC. However, on or about October 18, 2012, he submitted a new spot to the stations. This one as well may be seen in its generic form on the "Randall Terry for President" web site,[9] but had been modified for use in Florida by the insertion of two graphics referring to Terry as a candidate for Congress, an "I approved this message" disclaimer voiced by Mr. Terry, and a sponsor identification indicating that the message had been paid for by "Randall Terry for U.S. House." The spot featured the usual footage of bloody fetuses. On Friday, October 19, the Stations informed Mr. Terry's buyer that they would not run it. On Monday, October 22, the undersigned wrote to Mr. Terry's counsel explaining that Mr. Terry had been denied access by the Stations because he was not a legally qualified candidate for public office, as defined by the FCC's rules.[10]

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7 Digital files of the Terry ads submitted to the Stations will be made available to the Commission on request.

8 *See,* e-mail dated October 10, 2012, from Howard F. Jaeckel, Associate General Counsel, CBS Broadcasting Inc. to Kathy Offerman, attached as Exhibit C.

9 *See*, spot titled "Roe, It Was All a Lie," available at http://www.terryforpresident.com/.

10 *See,* e-mail dated October 22, 2012, from Howard F. Jaeckel, Associate General Counsel, CBS Broadcasting Inc. to Patrick Purtill, Esq., attached as Exhibit D.

Argument

1. The Complaint is Moot.

The election is now over and the Commission cannot order the Stations to afford time to Mr. Terry. The Complaint should therefore be dismissed as moot. *See, Public Notice, Use of Broadcast Facilities by Candidates for Public Office*, 3 FCC 2d 463, 485 ("The holding of the primary or general election terminates the possibility of affording "equal opportunities," thus mooting the question of what rights the claimant might have been entitled to under section 315 before the election.")

Complainant cannot credibly argue that this situation presents a real controversy that is "capable of repetition yet evading review." See, e.g., *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982). The Stations communicated the denial of access of which Mr. Terry here complains on October 19, fully explaining their decision in an e-mail from counsel on the next business day, October 22.[11] There can be no legitimate excuse for Mr. Terry's having waited until after business hours on November 5, Election Eve, to send a two-page complaint to the FCC staff. Any lack of opportunity for "review" of this matter is solely attributable to Complainant.

The inescapable fact is that the Commission can no longer grant the relief that Complainant purports to seek – that is, an order "immediately direct[ing] CBS and the Stations to provide Mr. Terry reasonable access." Nor, given Complainant's inexcusable delay, could the Commission have reasonably been expected to grant that relief, which would have required action in a matter of hours on Election Day. Complainant should not now be heard to demand that the Commission expend

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[11] The Complaint alleges that CBS did not respond to an October 19, 2012 e-mail from Mr. Terry's counsel questioning the basis for CBS's decision not to sell him time. That is simply not true. *See*, note 11, *supra*, at 5; e-mail dated October 22, 2012, from Howard F. Jaeckel, Associate General Counsel, CBS Broadcasting Inc. to Patrick Purtill, Esq., attached as Exhibit D.

resources to consider what has become, due solely to the Complainant's inaction, a wholly abstract matter.

In addition to wasting Commission resources, its consideration of the merits at this stage would prejudice CBS by depriving it of the ability it otherwise would have received to cure any alleged violation of the Communications Act by complying with an FCC order to make time available. Given Complainant's laches, CBS should not have to face the threat of being found, post-election, to have committed a violation of the Act for which license revocation is a contemplated sanction, and which can no longer be remedied.

Terry failed to assert his rights until a Commission decision granting the relief purportedly sought was no longer possible. The Complaint should be dismissed as moot.

2. Complainant Was Not a Legally Qualified Candidate for U.S. Representative from Florida's 20th Congressional District.

Notwithstanding his success in procuring a place on the ballot, Randall Terry was clearly not a legally-qualified candidate for U.S. Representative from Florida's 20th Congressional District within the meaning of the FCC's rules.

Those rules define a legally qualified candidate as someone who, in addition to having qualified for the ballot, "***[i]s*** qualified under the applicable local, State or Federal law to ***hold the office*** for which he or she is a candidate." 47 CFR § 73.1940 (a) (2) (emphasis added). Mr. Terry was not so qualified, since the United States Constitution provides that "[n]o Person shall be a Representative . . . who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2.

It is undisputed that Mr. Terry was not a resident of the State of Florida at any relevant time, up to and including on Election Day. According to press reports, Mr. Terry had stated that he would take up residence in Florida if he were elected to Congress.[12] But the Constitution requires, in the plainest of language, that in order

12 *See,* William E. Gibson, "Congressional Race Targets Obama, National Themes," *Sun Sentinel,* Sep. 25, 2012 ("Members of Congress must live in the state they represent, so Terry said he plans to be in South Florida on Election Day and move there if he wins.")

to represent a state in Congress, a person must be an inhabitant of that state "when elected." The Complaint contains no allegation that Mr. Terry was a Florida resident when the election was held on November 6, 2012.

Nor did Mr. Terry meet the criteria set forth in the FCC's rules for "legally qualified" status when he submitted his request for time to the Stations. The Commission's rules are unambiguously written in the present tense, describing a legally-qualified candidate as one whom "***[i]s*** qualified under the applicable . . . law to hold the office for which he or she is a candidate." 47 CFR § 73.1940 (a) (2). Thus the theoretical possibility that a person might *become* qualified at a later date does not suffice to meet the plain requirements of the rule. At the time he submitted his order to the Stations, Mr. Terry had taken no steps to establish residence in Florida as of Election Day. CBS pointed that fact out in an October 22 e-mail to Mr. Terry's counsel. Although the burden of proving legal qualification rests on the candidate, 47 CFR § 1941(d), CBS received no reply disputing Complainant's non-resident status or offering evidence he would become a resident by Election Day.

Terry's having been placed on the ballot cannot alter the fact that he was not qualified to hold the office of U.S. Representative from Florida's 20th Congressional District at any relevant time. That office is a federal office and its eligibility requirements are set by federal law – specifically, the United States Constitution. Accordingly, the instant facts present no occasion for deference to state authorities in determining whether Complainant "[i]s qualified . . . to hold the office for which he or she is a candidate." *Cf. First Am. Title Co. v. Devaugh*, 480 F.3d 438, 455 (6th Cir. 2007) ("A state court's opinion on an issue of federal law . . . is entitled to no deference whatsoever.")

In *Socialist Workers Party* ["SWP"], 39 FCC 2d 89 (1972), the SWP's candidates for U.S. president and vice president were, respectively, 31 and 21 years of age. Although they had been certified for the ballot in at least six states, the Commission denied their request for "equal opportunities" with respect to several non-exempt appearances by major party nominees on network and nationally-syndicated broadcasts. The Commission acknowledged its repeated statements that "a legally qualified candidate must be determined by reference to the law of the state in which the election is being held," but did not find that principle relevant to a case in which candidates for the presidency and vice-presidency, although on a number of state

ballots, had not attained the age of 35, and therefore did not meet the minimum age requirement for holding the office set by the Constitution. *See id.* at 92.

Significantly, the Commission reached this decision notwithstanding the argument that the Twentieth Amendment to the Constitution gave Congress the power to provide by law for a situation in which neither the president-elect nor vice-president elect qualified to hold that office, thus creating a theoretical possibility that an under-age candidate might nonetheless become president. *Id.* at 90, 92. The Commission's decision in *Socialist Workers* thus negates any argument that Complainant was legally qualified when he requested time on the Stations because he *might* have established residence in Florida by Election Day.

It is, of course, a basic principle of administrative law that an agency must follow its own rules.[13] In this case, those rules unambiguously require that, to be a legally qualified *candidate*, a person must *at the time in question* be legally qualified *to hold* the office he is seeking. The Commission's strict adherence to its rule is particularly essential in this case, since any departure from the rule's plain language would have required WFOR and WBFS to broadcast material "which reason tells them should not be published," *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 256 (1974), thus raising the most serious First Amendment questions.

3. **A Decision that the Stations Were Required to Sell Time to Complainant Under the Facts of this Case Would Be Both Inconsistent with the Supreme Court's Interpretation of Section 312(a)(7) and an Unconstitutional Application of that Statute.**

Although the mootness of Mr. Terry's complaint and his lack of qualifications to hold office as a Congressman from Florida each independently are fatal to Mr. Terry's Complaint, separate constitutional grounds also compel the Complaint's

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13 *See*, e.g., *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[a]n agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books"); *Vitarelli v. Seaton*, 359 U.S. 535 (1959) (dismissal of former government employee was illegal because the agency's dismissal "fell substantially short of the requirements of the applicable department regulations"); *Service v. Dulles*, 354 U.S. 363, 373-76 (1957) (where dismissal from employment is based on a defined procedure, even though generous beyond the requirements binding the agency, that procedure must be scrupulously observed); *CBS Corp. v. FCC*, 663 F.3d 122, 128 (3rd Cir. 2011).

dismissal. The Supreme Court has repeatedly recognized that television broadcasters enjoy the "widest journalistic freedom" consistent with their public responsibilities. *Columbia Broadcasting System, Inc.* v. *Democratic National Committee,* 412 U.S. 94, 110 (1973); *FCC v. League of Women Voters,* 468 U.S. 364, 378 (1984). Indeed, the Court has observed that "[p]ublic and private broadcasters alike are not only permitted, but indeed required, to exercise substantial editorial discretion in the selection and presentation of their programming." *Arkansas Educational TV Commission v. Forbes,* 523 U.S. 666, 674 (1998). And in upholding Section 312(a) (7) against First Amendment challenge, the Court emphasized that the statute created a "*limited* right to 'reasonable' access that pertains only to legally qualified federal candidates and may be invoked by them *only* for the purpose of advancing their candidacies." *CBS Inc. v. FCC,* 453 U.S. 367, 396 (1981) (second emphasis added). The Court also stressed the Commission's stated intention, in enforcing the statute, to "provide leeway to broadcasters and not merely attempt *de novo* to determine the reasonableness of their judgments."

CBS respectfully submits that the judgment of the Stations not to air Complainant's advertisements, even if based on their content alone, would have been entirely justified, and that an application of Sections 312 and 315 to sanction such an eminently reasonable editorial judgment would violate the First Amendment.[14]

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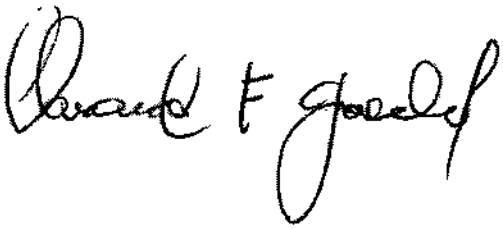
[14] *Becker v. FCC,* 95 F.3d 75 (D.C. Cir. 1996), is not to the contrary. In that case, the FCC had granted a broadcaster's petition for a declaratory ruling that it could "channel" a federal candidate's commercial containing footage of aborted fetuses to late night hours when children would be less likely to be in the audience. In so ruling, the Commission stressed its unwillingness "to infer that Congress ... intended to strip licensees of all discretion to consider the impact of political advertisements featuring graphic depictions of abortions on children in their audience.""

The Court of Appeals, finding nothing to support the Commission's inference as to Congressional intent, held that the agency's construction of the statute was not entitled to deference under the Supreme Court's decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). However, the issue here is not the reasonableness of an administrative agency's interpretation of a statute, but whether, regardless of what Congress intended, a statute can be constitutionally applied in a particular manner – in this case, to deprive a broadcaster of *any* editorial discretion to refuse to air an announcement proffered by a non-resident of a

However, there is no need for the Commission to reach constitutional issues to dispose of this case.

The complaint should be dismissed as moot. Alternatively, it should be dismissed because the Stations correctly – and certainly reasonably – found that Complainant was not a "legally qualified' candidate for public office as defined by the FCC's rules.

Very truly yours,



cc: Patrick Purtill, Esq.
Gammon & Grange, P.C.
8280 Greensboro Dr.
7th Floor
McLean, VA 22102

---

state who has nonetheless managed to get on a congressional ballot, no matter how attenuated the announcement's relevance to his purported candidacy or how grotesque its content. We respectfully submit that nothing in *Becker* bears on that question.

EXHIBIT A

LAW OFFICES
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

Charles J. Harder
CHarder@wrslawyers.com

File No.
81058-001

October 15, 2012

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

VIA E-MAIL AND CERTIFIED MAIL, RETURN RECEIPT

WFOR-TV
8900 NW 18th Terrace
Doral, FL 33172
Email: wfornews@wfor.cbs.com

Dear WFOR:

This law firm is litigation counsel for Samuel L. Jackson in connection with the television commercial that you are currently running (the "Commercial") for Randall Terry for President using Mr. Jackson's name and image, and making statements about him and his supposed beliefs and affiliations. The statements in the Commercial regarding Mr. Jackson are false and defamatory, and also constitute an infringement and violation of his intellectual property rights, as explained below. Demand is therefore made that you cease and desist, immediately and permanently, from running the Commercial. Failure to comply with this demand will leave Mr. Jackson with no alternative but to seek judicial intervention from the United States District Court to enjoin the unlawful and infringing Commercial, and to seek appropriate monetary damages in connection therewith.

Defamation by Slander

The Commercial states that Samuel L. Jackson associates himself with persons and organizations who advocate that "Blacks are human weeds" and want "to abort Black babies" and "sterilize Black men and women" and advocate "Black genocide." All such statements are false, defamatory and outrageous.

Moreover, Randall Terry maintains a website at the domain name UncleTomJackson.com where he refers to Mr. Jackson as "Uncle Tom" and expressly

11400 West Olympic Boulevard, 9th Floor Los Angeles, California 90064-1582
tel 310.478.4100 fax 310.479.1422
www.wrslawyers.com
Los Angeles • Las Vegas • Reno • Birmingham

states about him: "Mr. Jackson is advocating the eradication of his own race." Thus, Mr. Terry clearly attributes all such statements to Mr. Jackson.

The statements in the Commercial about Mr. Jackson are completely false and defamatory and exceed the bounds of human decency. Mr. Jackson believes **the opposite** of these statements. The statements in the Commercial attributed to Mr. Jackson therefore are unprivileged, unlawful, and expose all persons who publish or broadcast such statements, including your station, to legal liability and monetary damages.

Slander is defined as "a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which ... [tends] directly to injure [a person] in respect to his office, profession, trade or business that has a natural tendency to lessen its profits ... [or which] by natural consequences, causes actual damage." Cal. Civ. Code § 46; *see also Bates v. Campbell*, 213 Cal. 438 (1931) (holding that defamation "has been held to include almost any language which, upon its face, has a natural tendency to injure a person's reputation, either generally, or with respect to his occupation") (emphasis added). It is well established that "defamation by implication stems not from what is literally stated, but what is implied." *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990). A statement can constitute defamation "for what is insinuated as well as for what is stated explicitly." *Kapellas v. Kofman*, 1 Cal.3d 20, 33 (1969) (emphasis added).

Here, each of the statements in the Commercial listed above is false, unprivileged and has the obvious tendency to harm my client in his profession. Therefore, liability and substantial damages can easily be established.

Malice is established by showing a reckless disregard for the truth. Malice easily can be established here by nature of the fact that Mr. Jackson has never advocated any of the deplorable statements attributed to him in the Commercial and, on the contrary, has advocated **the opposite** of those statements publicly and consistently. *See e.g. St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323 (1968); *Curtis Publishing Company v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967); *Reader's Digest Assn., Inc. v. Superior Court*, 37 Cal.3d 244 (1984); *Widener v. Pacific Gas and Electric Company*, 75 Cal.App.3d 415, 436 (1977); *Fisher v. Larson*, 138 Cal.App.3d 627, 640 (1982); *Kapellas v. Kofman*, 1 Cal.3d 20 (1969); *Burns v. McGraw-Hill Broadcasting Company, Inc.*, 659 P.2d 1351, 1361-62 (Colo. 1983); *Pep v. Newsweek*, 553 F.Supp. 1000, 1002 (S.D.N.Y. 1983).

False Light Invasion of Privacy

The Commercial also constitutes a false light invasion of privacy. To be actionable, the speech at issue must be a public statement about a person that either is false or places the person in a false light, is highly offensive to a reasonable person, and is made in reckless disregard of whether the information is false or would place the person in a false light. The statement need not be defamatory. RESTATEMENT OF THE LAW, SECOND, TORTS § 652 E (1977); *Gill v. Curtis Pub. Co.*, 38 Cal. 2d 273 (1952); *Fellows v. National Enquirer, Inc.*, 165 Cal. App. 3d 512, 528 (1985).

As discussed above, the Commercial meets each of these elements. Moreover, this doctrine has been held to establish liability in **political advertising**, similar to the Commercial at issue. In *Hinish v. Meier & Frank Co.*, 166 Or. 482, 113 P.2d 438, 138 A.L.R. 1 (1941), the court held that the plaintiff had an actionable claim for false light invasion of privacy when the defendant sent a **political mailer** falsely attributing the plaintiff's name to a particular political message. *See also Schwartz v. Edrington*, 133 La. 235, 62 So. 660 (1913) (issuing an **injunction** to prohibit a newspaper from publishing names of persons who had initially signed a petition but later **withdrew** their signatures).

Intentional and Negligent Infliction of Emotional Distress

The use of Mr. Jackson's name and image to advocate the highly offensive statements in the Commercial, namely that he supposedly advocates "Black genocide," and the other such outrageous positions discussed above, has caused Mr. Jackson to suffer substantial emotional distress. Mr. Jackson may seek substantial monetary damages, including punitive damages, for this violation.

Common Law Right of Publicity Violation

Mr. Jackson's name, image and identity have a substantial value. Your station is using his name, image and identity for a commercial purpose without his permission. *See Eastwood v. Superior Court*, 149 Cal.App.3d 409, 420 (1983) (holding that Clint Eastwood had a viable cause of action for common law right of publicity against a news organization for publishing allegedly false and defamatory statements about him); *Cher v. Forum Int'l, Ltd.*, 692 F.2d 634 (9th Cir. 1982) (awarding monetary damages against a news organization for common law right of publicity for falsely associating Cher's name, image and identity with the news organization). Moreover, Mr. Jackson has incurred

substantial damages to his goodwill and future publicity value in connection with the Commercial. In *Tom Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1103 (9th Cir. 1992), for example, the Ninth Circuit U.S. Court of Appeals upheld a $2.5 million jury verdict in favor of Mr. Waits, a singer outside of the mainstream and not particularly well-known, for the unauthorized use of his publicity rights in a radio ad, based on the "fair market value" of his publicity rights, damages to his "goodwill, professional standing and future publicity value," damages to his "peace, happiness and feelings," and punitive damages. Thus, Mr. Jackson is entitled to seek all such categories of damages here, as well as a court order enjoining the Commercial.

Lanham Act Violation

The Commercial also constitutes an unlawful false representation, false association, and dilution of Mr. Jackson and his valuable trademarks, namely his name and image, in violation of the federal Lanham Act, Title 15, United States Code, Section 1125, *et seq.* Mr. Jackson therefore is entitled to a federal court injunction, substantial compensatory damages, statutory damages, treble damages (three times compensatory damages) and reimbursement of his attorneys' fees and costs. 15 U.S.C. § 1117.

In light of the foregoing, demand is hereby made that you immediately and permanently cease and desist from running the Commercial.

Please send written confirmation by no later than close of business Tuesday, **October 16, 2012**, that the Commercial has been permanently stopped. Should we fail to receive this confirmation by that time, then Mr. Jackson will have no alternative but to take further action as necessary and appropriate to enforce his legal rights.

In light of this notice of pending dispute, demand is further made that you immediately preserve all physical and electronic documents, materials and data (collectively, "documents") in your possession, custody or control that are or might be relevant or related to the foregoing matters. This demand includes, without limitation, the preservation of all electronic mail (email), letters, facsimile transmissions, memoranda, instant messages (IMs), reports, handwritten notes, typewritten notes, charts and spreadsheets, among other types of documents and communications. *See In re Napster, Inc. Copyright Litigation*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006) (holding that "[a]s soon as a potential claim is identified, a litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action"); *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 193 (C.D. Cal. 2006) (same); *William T.*

Thompson Co. v. General Nutrition Corp., 593 F. Supp. 1443 (C.D. Cal. 1984) (same). Severe sanctions can be imposed for failure to preserve evidence after being notified of a dispute. See e.g. *Cedars-Sinai Medical Ctr. v. Superior Court*, 18 Cal. 4th 1, 12 (1998) (adverse inferences are available for failure to produce documents); *R.S. Creative, Inc. v. Creative Cotton, Ltd.*, 75 Cal. App. 4th 486 (1999) (punitive sanctions imposed for spoliation of evidence); *Trigon Ins. Co. v. United States*, 204 F.R.D. 277 (E.D. Va 2001) (monetary sanctions, witness preclusion and adverse inferences imposed against party engaged in spoliation of evidence); *Beers v. General Motors*, 1999 WL 32538 (N.D.N.Y) (dismissal of case for spoliation when party's expert lost critical evidence); see also *Cabinetware, Inc. v. Sullivan*, 1991 WL 327959 (E.D. Cal. 1991); *William T. Thompson Co. v. General Nutrition Corp.*, 593 F. Supp. 1443 (C.D. Cal. 1984).

This letter is not intended to serve as a full statement of all facts relating to this matter, nor should anything herein be construed as a waiver, release or relinquishment of any rights, remedies, claims or causes of action available to my client, all of which are hereby expressly reserved. This letter is confidential and inadmissible pursuant to California Evidence Code § 1152, *et seq.*, Federal Rules of Evidence, Rule 408, *et seq.*, and any related legal authorities. As such, this letter may not be disseminated to anyone outside of your station or its legal representatives, and may not be used in any legal proceedings for any purpose.

Very truly yours,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

CHARLES J. HARDER

CH:rr

cc: Deborah L. Klein, Esq. (via email)
Jeffrey Arden Bernstein, Esq. (via email)

1128969.1

EXHIBIT B

Dear Pro-Life Friend,

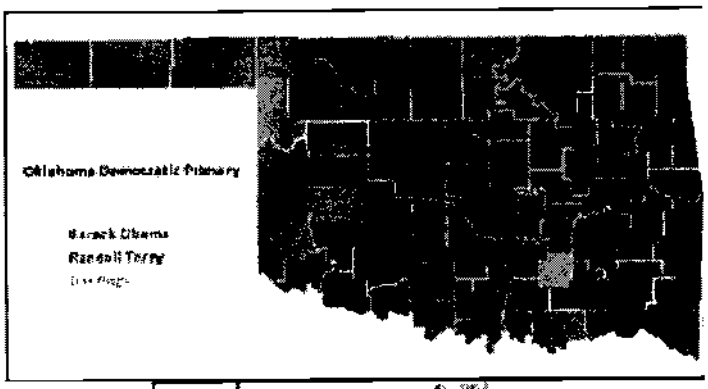
I beg you In Jesus' Name – with all my heart – to read this entire letter.

We Can Reach Over 50 Million Americans in 20 States with the Truth About Child killing

WE **WONT HURT ROMNEY** and *We May Cause Obama to Lose the Election!*

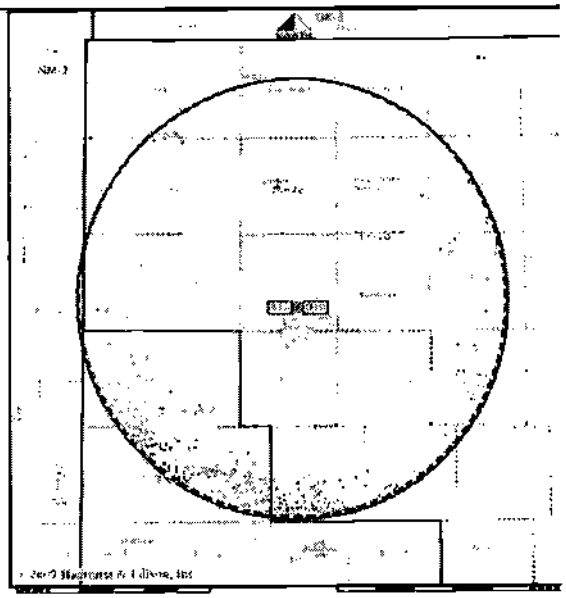
This may be the most important battle I have ever fought for God, unborn babies, and the survival of our nation. What follows is the plan whereby we can **cause Obama to lose** the "battleground" or "swing states" – **and to lose the White House**...because he promotes murder, attacks the Church, and assaults marriage. This strategy is proven...and we WON'T hurt Romney! The details of this strategy are CRITICAL so read this carefully. (*If ANYONE writes me that I will "hurt Romney" or "split the vote" it means they did not read this letter carefully!*)

On March 6, I Beat Obama in 12 Counties in the Oklahoma Democratic Primary. How? My TV Ads!



In 2011, I switched my party to Democrat in order to run against Obama in the primary. I did this – knowing I would lose – in order to be a voice for the babies, and weaken Obama for the general election. Our TV ads have run in 16 states so far!

The map shows the 12 counties where I beat Obama, including the entire Oklahoma panhandle. I beat him by airing TV spots that: 1) Showed babies murdered by abortion; 2) Said Obama is attacking the Church; 3) Said that *if a Christian voted for Obama, they empowered him to kill babies and attack the Church*. The ads worked!



A Quick Lesson in FCC Law

TV stations are required by FCC law to run the TV ads of *any federal candidate who is on the ballot* in that state. FCC Law *also requires* stations that provide TV coverage to **neighboring states** to carry the TV ads of candidates. (See CBS story next page.)

This map is an FCC TV coverage map for KFDA-CBS in Amarillo TX. CBS is required to run the candidates' ads, in all green shaded areas shown on this map, *even in New Mexico and Oklahoma.* I won the Oklahoma panhandle **by advertising in TX**!

We Reached the Entire State of Oklahoma With TV Ads…And Tens of Thousands of **Texans** Saw the Ads as Well.

We Can Hurt Obama in the Swing States – And We WON'T hurt Romney!

Read this section closely. We were able to reach the entire state of Oklahoma with our ads because I was on the ballot in Oklahoma. But in addition to OK, tens of thousands of voters in Texas saw the ads – people who could not vote for me – because I was not on the ballot in TX. **Many Texas voters will not vote for Obama because they saw my TV ads in Amarillo TX.**

These ads have a strong impact on viewers. They affect how people vote. And we KNOW that these ads save babies lives! One teenager called to say she cancelled her abortion!

The Tulsa World reported in Tulsa Oklahoma: "Anti-abortion activist Randall Terry said Tuesday that he intends to turn Oklahoma's…March 6 Democratic presidential primary into a referendum on 'dead babies.'" We did just that. Thousands of Oklahoma Democratic voters voted against Obama. Their consciences were pricked; they forsook Obama, and stood with the babies. **We can do the same thing this fall!**

How Can We Be Sure We Will Hurt Obama…*and Not Romney*?

Some say: "Randall, I'm no fan of Romney, but we must defeat Obama. If you run, won't you take away votes from Romney too? How can you hurt Obama, and not hurt Romney?" Here is the amazing answer: **FCC Law.** I can run ads in states where I am not even on the ballot!

KFDA-TV, CBS (Texas) Issued Following Press Statement to Their Viewers:

AMARILLO, Texas---An Oklahoma democrat is stirring up controversy right here in the Panhandle tonight after a series of presidential attack ads hit the air.

Many find the ads offensive but as NewsChannel 10 discovered, there's little the Federal Communications Commission can do.

There are strict regulations when it comes to commercials and local advertisements, but it's a completely different ball game when dealing with political campaign ads.

The name Randall Terry may not ring a bell to many people when talking about presidential candidates until now…

Federal law requires all broadcast TV stations to accept and air--without editing--the paid advertising of all legally qualified candidates for president.

Federal law also requires TV stations to air campaign ads whenever the candidate for federal office requests them to run, that means any time of day.

The ads began airing Feb. 16 and will continue to run through Monday.

We Can Run TV Ads in Swing States Where I am NOT on the Ballot. The Babies Will Be Front and Center, & I WON'T Hurt Romney, Because No Pro-lifer Will See My Name on the Ballot in those Swing States.

Our plan focuses on suppressing Obama's vote in seven key states: Virginia, Ohio, Pennsylvania, Indiana, Iowa, Colorado and Florida. This is a targeted, low cost plan that allows "political sniper fire" from the three "safe Romney states" – West Virginia, Kentucky, and Nebraska – (where Romney will win by 12% or more) to suppress Obama's vote in six adjoining "swing states." We can reach tens of millions of people in swing states – **and hurt Obama** – by running in three "safe Romney states" where I WILL NOT hurt Romney. Look at this chart:

On Ballot in 4 "Safe Romney States:"	Reach population of:	Areas and **Swing States** reached in Ads
West Virginia (GOP won by 13% in '08)	20 million	WV and VA, OH, PA, DC, MD (See attachment 1)
Kentucky (GOP won by 16% in 2008)	Over 10 million	KY and IN, OH, TN, MO, AR, IL, NC (See attach. 2)
Nebraska (GOP won by 15% in 2008)	Nearly 10 million	NE and CO, IA, SD, KS, WY (See attachment 3)
Florida (Running for US House Seat)	Over 10 million	Half the Population of Florida (See attach. 4)
With Your Help We Could Reach Over 50 million people in 20 States – And Pummel Obama in 7 Swing States!		

Let's be honest: Mitt Romney is NOT making dead babies and Obama's attack on the Church and marriage a key part of his campaign. (Thankfully, he has vowed to overturn Obama-Care, so he would be better than Obama.) But sadly, MANY powerful Republicans want the "social issues" to go away. They want elections to be about money, MONEY, and **MONEY**. But we – as Christ's servants – must have God's priorities. We must make MURDER the #1 issue of this election; we need Obama to lose because of his part in child killing and his attack on the Church. Then will child-killing take its place as the #1 "make or break" political issue that it truly is. If Romney does evil, we'll throw him out too!

It is a sad and tragic fact: 35% of Evangelicals and a whopping 55% of Catholics voted for Obama in 2008. That number is horrifying; it is a scandal here on earth, and must cause grief in heaven. Now that those Christians have seen Obama's evil agenda…some of them may repent.

My TV ads aim at the Christians who voted for Obama in 2008. My message is simple: ***"The blood of babies cries out to God for vengeance!"*** *If you vote for Obama again, you empower him to murder babies, attack the Church, and attack marriage...and you share the guilt of his sins, and perhaps help procure God's judgment on our nation.*

Some of these misguided Christians still have an **active** conscience. If we reach them with TV ads showing the babies being slaughtered because Obama is in office, and his attack on the Church and marriage – some of them will repent…and refuse to vote for Obama. If a small percentage of those Christians refuse to vote for Obama, he will lose the election.

Please...grasp this reality: If this message is seen and heard in the swing states, Obama will lose the White House. And the world will see that murdered babies and the Church caused Obama's defeat. I will now show you the details on how we can cause Obama to lose Ohio, Virginia, Indiana, Iowa, Colorado, Florida – and NOT hurt Romney. (Over)

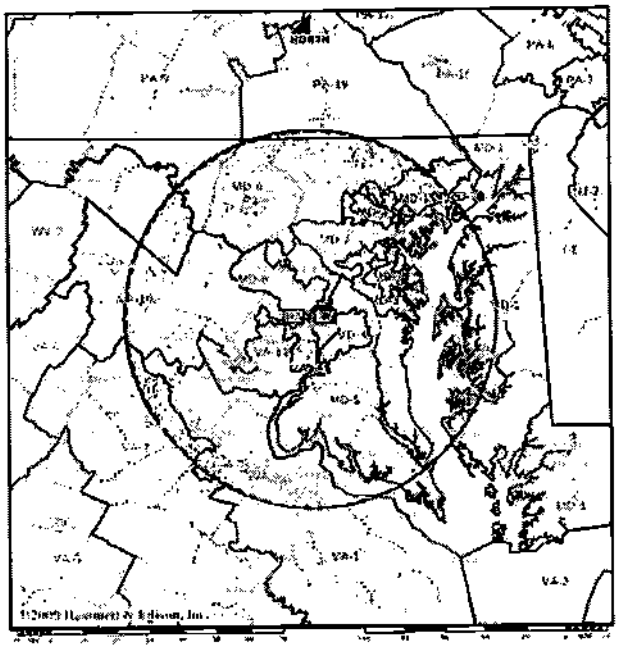
This aborted baby in TV ads jolts the conscience of Christian voters far more than the economy. If they plan to vote for Obama, this baby might cause them to "wake up" and NOT vote for him. Go to www.TerryForPresident.com to see the ads.

The New York Times…Covering Our Election Mission!

"I am trying to cause a defeat [for Obama] by creating a crisis of conscience," said Mr. Terry, 52, the founder of Operation Rescue, in an interview from his home in West Virginia. "The goal is to drive child killing to the front and center of the political debate."…"I am going to try to run my ads in Florida, North Carolina, Ohio," he said. "I am going to try run them in all the swing states. Then on election night, when all the commentators are saying why he lost, it will be because of the images of those dead babies." [When the New York Times covers a story, you know it's serious…and big.]

On Ballot in Three "Safe States" as an **Independent**, and I Can Reach Into 21 States to be a Voice for the Babies and the Church!

Attachment #1: On Ballot West Virginia. Our TV Ads Will Reach over 20,000,000 People (Twenty Million) including people who live VA, OH, MD, DC and PA.



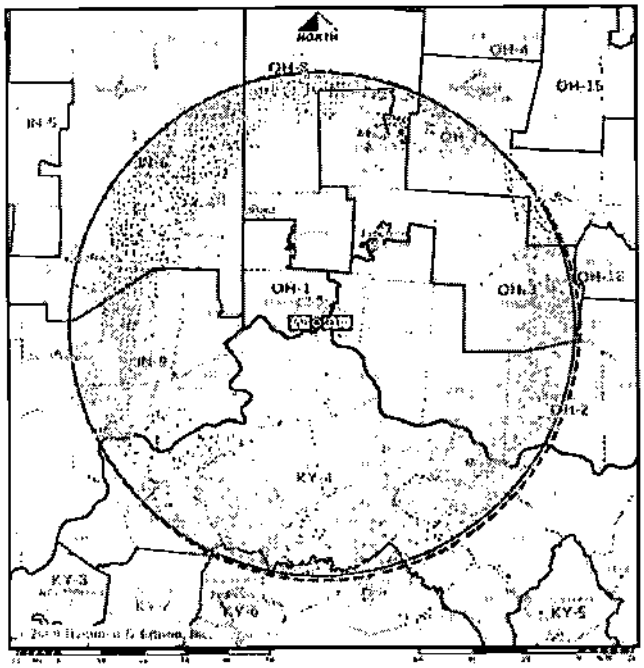
The Total Population of West Virginia according to 2010 census is 1,855,364. (Less than 2 million.)

Study this FCC map. This ABC Wash. DC affiliate is required to run TV ads of candidates in WV. Those ads reach millions of people in Northern Virginia, which Obama carried in 2008. Obama must lose Northern VA if he is to lose the White House, and I can reach those voters by being on the ballot in WV. (Bush carried VA and OH in 2000 and 2004.)

1.8 million people live in WV, yet 20,000,000 people (**twenty million!**) live in areas covered by the ten TV markets that are required BY LAW to run the ads of a WV Candidate. The stations reach voters in the swing states of Virginia, Ohio, and the possible swing state of Pennsylvania. (PA has been won by the Democrat since '92, but could be "in play" in 2012.)

Hundreds of Thousands of Catholics in the Pittsburgh PA/Eastern OH area will see our ads. For example, in Pittsburg PA – which broadcasts into WV – a station reaches over 3.2 million people in PA and OH! By Running in WV I reach 20 million people in WV, VA, OH, PA, DC, & MD!

Attachment #2: On Ballot Kentucky. Our TV Ads Will Reach Kentucky, Plus Ten Million People in IN, OH, TN, MO, AR, IL, and NC

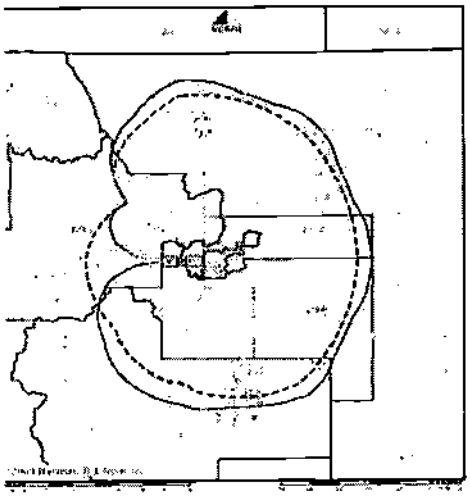


- **Cincinnati OH** reaches over 2,000,000 people in Ohio and Indiana;
- **Louisville KY** reaches a large population in southern Indiana;
- **Evansville IN** reaches hundreds of thousands of people in Indiana.

Obama barely carried Indiana - by less than 1%. Obama only carried Ohio by 4%. Bush won Indiana and Ohio in 2000 and 2004.

As this FCC map of Cincinnati OH, shows, our ads will be seen by nearly 3 million people – **most living in Ohio and Indiana** – with this message: "If you vote for Obama, you empower him to murder babies and attack the Church." Obama must lose Indiana and Ohio to lose the White House. (Another city reaches N.C.!)

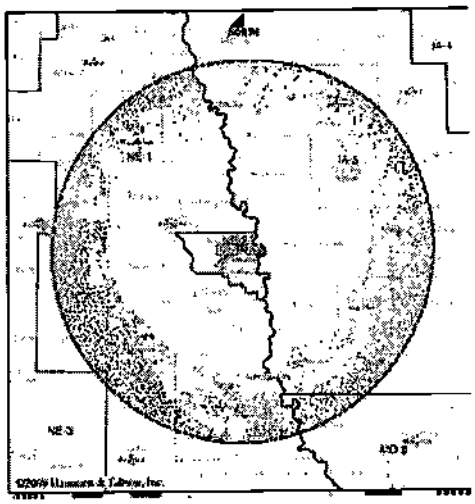
Attachment #3: On Ballot Nebraska. Our TV Ads will Reach Nebraska, & Nearly 10,000,000 (Ten Million) People in CO, IA, SD, KS, and WY



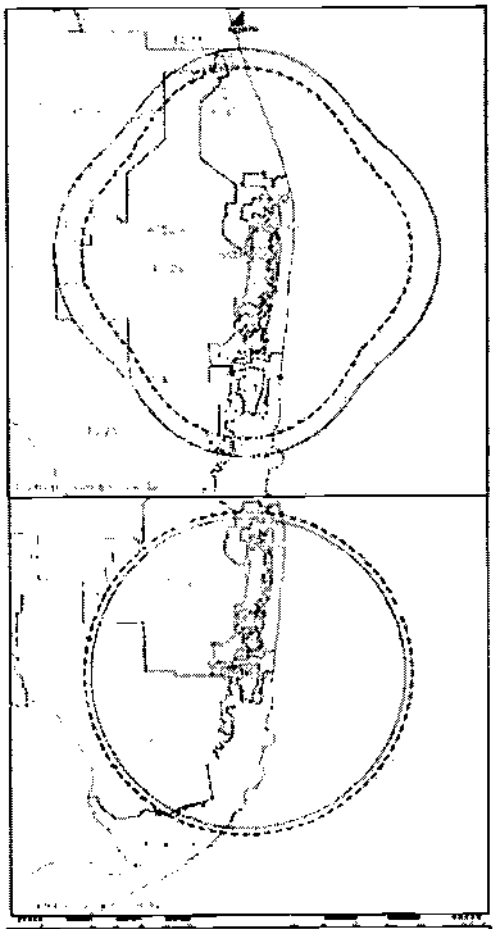
On left is the FCC map of ABC, Denver CO; right is the FCC map for Omaha. The stations reach Nebraska, as well as CO and IA respectively. By running in Nebraska, I will reach the voters of Colorado and Iowa.

Obama carried Colorado in 2008; Bush carried it in 2000 and 2004. Obama carried Iowa in 2008; Bush carried it in 2004.

Causing Obama to lose either of these states is critical if he is going to lose the White House.



Attachment #4: On Ballot in Florida as an **Independent Congressional Candidate** Our TV Ads Will Reach Over 10,000,000 (Ten Million) People… …Over <u>Half the Population</u> of Florida!



<u>Friend, Florida is perhaps our boldest, most daring effort, which could cost Obama the White House</u>. And again, as a Federal Candidate, I can say whatever I want in my TV ads…such as: "You cannot vote for Obama!"

In Florida, I will run for the 20th District House Seat against Alcee Hastings – a hard-core promoter of Planned Parenthood and child killing. He is one of the most corrupt, wicked Democrat House members to ever serve. You may know his name: Alcee Hastings was the Federal Judge who was impeached in 1989 for bribery. He then got elected to Congress, and is still beset by scandal and investigations.

Florida has 19,057,542 total residents. Florida House District 20 is split between the FCC maps for West Palm Beach, and Miami/Ft. Lauderdale (see maps on left). Those two TV markets reach **OVER TEN MILLION PEOPLE**… <u>over half the population of Florida</u>!

Bush carried Florida in 2000 and 2004. <u>Obama won Florida by only 1%</u>; most of his votes came from the three counties of south Florida – Miami-Dade, Broward, and Palm Beach Counties. I can run the same type of ads I run everywhere else, except they will be paid for and approved by Randall Terry for U.S. House.

Friend, we MUST cause Obama to lose Florida, and this is the best chance we have to do it…for the babies and the Church!

This Section Paid for by Committee:
Randall Terry for Congress

If Obama Loses FL, VA, OH, IN, and CO, He Loses the White House.

Will You Help Cause His Defeat? Will You Sacrifice For God, the Babies & the Church?

Friend, if Obama loses even FIVE of these swing states, he will lose the White House. We have the chance – with this strategy – to show MILLIONS of Americans the truth about child killing, AND cause Obama to be defeated because he promotes murder and attacks the Church.

We have shown in Oklahoma what this message will do if we have the resources. I took 18% of the vote statewide, and beat Obama in 12 counties and the entire panhandle of Oklahoma – with TV ads in TX!

We have shown our TV ads prick people's consciences, change how they vote, and create much media for the babies and religious liberty.

We have exposed Obama's Achilles Heel that could cause him to lose the election – his promotion of murder, and his attack on the Church.

RIGHT NOW is when the battle for the babies is the most critical; *NOW is when we need your most sacrificial gift for our TV ads.*

There are Six Congressional Candidates Using This Plan!

Meet them and See Their Commercials at:
www.ProLifeCandidates.com

Our Lord Jesus Christ wants babies to be protected from murder; *He hears the cry of their blood.* He wants their voice and their plight to be FIRST – NOT LAST – in politics. God wants His Church to be holy and free. God wants marriage protected from perversion. I am convinced in the core of my being that this message – this PRIORITY – matters to God Himself.

So the question is this: is it a priority to *you*? Will *you* INSIST that our political priorities reflect God's priorities? Will *you* SACRIFICE to see babies' lives and our liberty front and center in this election? If so, this campaign is arguably the most effective way to do so.

I ask you to sacrifice for God, for His Innocent Babies, for His Truth and Justice. I ask you to pour out from your earthly treasure ALL THAT YOU CAN to fund this campaign, so that we can run these hard-hitting ads in the swing states, and cause Obama to lose the election. I am not paid for this…my staff is all-volunteer. We are sacrificing, and we ask you to sacrifice with us…for God and His babies. You have stood with me in the past: please stand with me again.

Please give the maximum campaign contribution allowed by law: $2,500. I am also asking you – if your conscience permits – to prepay your tithe money for the next six months, or the next year, and give to the life saving mission of this campaign and these TV ads.

If you cannot give $2,500, I ask you to give every penny you can, and to commit to give what you can every month until the election.

For Christ, His Babies, His Truth, His Justice…and for the Survival of this Republic,

Randall Terry

P.S. Please go to my web site, and meet my fantastic VP running mate, Missy Smith. She is a post-abortive woman with incredible courage who ran for Congress in 2010. And please, give what you can today, and share this letter with friends. Tell EVERY Pro-lifer you know what we are doing!

Paid for by Randall Terry for President Campaign Committee.

EXHIBIT C

Jaeckel, Howard F

From: Jaeckel, Howard F
Sent: Wednesday, October 10, 2012 4:33 PM
To: 'kmofferman@gmail.com'
Cc: Levy, Adam; Inker-Puretz, Susan
Subject: Randall Terry Announcement

Dear Ms. Offerman:

I am responding to your request for a written statement concerning the decision of WFOR and WBFS not to air a spot purportedly on behalf of the candidacy of Randall Terry for U.S. Congress.

Simply put, we do believe the announcement is a "use" on behalf of Mr. Terry's purported candidacy within the meaning Section 315 of the Communications Act. The announcement does not urge viewers to vote for Mr. Terry; indeed, except for the sponsor identification at the end of the commercial, the announcement never mentions, either visually or aurally, that Mr. Terry is running for Congress And as to the sponsorship identification, we think it revealing that the message originally submitted to us was attributed to the "Randall Terry for President Committee," a clear indication that the office for which Mr. Terry is supposedly running is in fact irrelevant to the message he seeks to present.

Under the circumstances, the stations chose to exercise their editorial judgment not to run a commercial that included what was clearly intended to be understood as a bleeped obscenity, possibly defamatory statements about living persons, and images that we believe many of our viewers would have found highly offensive.

Sincerely,

Howard F. Jaeckel
Senior Vice President, Associate General Counsel
CBS Broadcasting Inc.
51 West 52nd Street
New York, NY 10019
(212) 975-4099 (phone)
(212) 975- 0117 (fax)
hfjaeckel@cbs.com

EXHIBIT D

From:	Jaeckel, Howard F
To:	PDP@GG-Law.com
Cc:	Inker-Puretz, Susan
Subject:	Randall Terry ad -- WFOR/WBFS
Date:	Monday, October 22, 2012 8:23:24 PM

Dear Mr. Purtill:

In response to your correspondence on Friday to Susan Inker-Puretz, I am writing to explain why WFOR-TV and WBFS-TV will not air the latest spots that have been submitted to the stations on behalf of the purported candidacy of Randall Terry for U.S. Representative from Florida's 20th Congressional District. We believe that Mr. Terry is not a legally-qualified candidate for that office as defined by the rules of the Federal Communications Commission.

Those rules define a legally qualified candidate as someone who, in addition to having qualified for the ballot, "***[i]s*** qualified under the applicable local, State or Federal law to ***hold the office*** for which he or she is a candidate." 47 CFR § 73.1940 (a) (2) (emphasis added). Mr. Terry is not so qualified, since the United States Constitution provides that "[n]o Person shall be a Representative . . . who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2.

We believe it is undisputed that Mr. Terry is not presently a resident of the State of Florida. While he has indicated that he will become such a resident if elected as a Representative from the 20th District,* we are aware of no steps he has taken, or will take, to establish *residency* in the State of Florida as of Election Day. It is thus equally indisputable that Mr. Terry ***is*** not currently "qualified under . . . Federal law to hold the office" for which he purports to be a candidate.

Notwithstanding the action of the Florida Secretary of State in qualifying Mr. Terry for the ballot, the FCC is not free to disregard its own rules, which are unambiguously written in the present tense. Although this basic principle of administrative law would be binding on the Commission in any case, it is all the more so when the Commission's disregard of the plain language of the rule would require WFOR and WBFS to broadcast material "which reason tells them should not be published." *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 256 (1974) (internal quotations omitted); *cf. Columbia Broadcasting System, Inc. v. Democratic National Committee,* 412 U.S. 94 (1973).

In addition, we note that Florida law prohibits simultaneous candidacies for multiple offices. *See*, Fla. Stat. Ann. § 99.012(2) ("No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.") We do not find your analogy to Paul Ryan's situation persuasive. Mr. Ryan is not running for any office in Florida; therefore, while applying Florida law as to Mr. Terry is necessary and appropriate, such application would in no way involve the law's "extraterritorial" extension as to Mr. Ryan.

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* *See,* William E. Gibson, *Congressional Race Targets Obama, National Themes*, Sun Sentinel, Sep. 25, 2012 ("Members of Congress must live in the state they represent, so Terry said he plans to be in South Florida on Election Day and move there if he wins.")

Sincerely,

Howard F Jaeckel
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New York, NY 10021
(212) 975-4099
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